

METROPOLITAN BOARD OF ZONING APPEALS

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RULES OF PROCEDURE

1. PURPOSE

The purpose of these rules is to provide for the orderly disposition of the business of the Metropolitan Board of Zoning Appeals (Board) by codifying the means by which that business is to be transacted. In some respects, these rules clarify ambiguous language in Title 17 of the Metropolitan Code of Laws and in others. These rules specify the procedure in situations not covered by the Code. All references made in these rules to the "Code" mean the Metropolitan Zoning Ordinance.

2. AUTHORITY

These rules are adopted pursuant to the authority vested to the Board by Metropolitan Charter, Section 11.107 and Tennessee Code Annotated. §13-7-205.

3. APPLICATION

- (A) Any person who wishes to apply to the Board under the provisions of the Code must do so on a form provided for that purpose by the Department of Codes Administration.
- (B) Each application will be assigned a number by the Secretary of the Board or their designee, and be placed on a docket for hearing in chronological order, unless, the Board orders otherwise pursuant to the Code or these rules.
- (C) All applications must be accompanied by a scaled drawn site plan. Site plans shall be drawn on a size not less than 8 ½" x 11" nor larger than 11" x 17" and conform to the following standards:
 - 1. Site plans for uses other than one or two family residential and day care homes shall be drawn to an engineer's scale and be of professional quality.
 - 2. All sign applications shall be accompanied by a drawing showing the proposed elevation and dimensions.
 - 3. The Board will also accept electronic site and elevation drawings submitted in Adobe Acrobat (PDF).

4. Appellants to the Board of Zoning Appeals shall provide all required information to the staff by the filing deadline. Cases will not be placed on a docket by the Secretary until the required information is provided. A checklist will be provided by the staff to aid in the submittal process.

4. WITHDRAW OR FAILURE TO APPEAR

- (A) Any appellant may withdraw their application once, without prejudice, at any time prior to the public hearing on the case. A public hearing is deemed to have begun after any opening remarks requiring evidence have been made by the appellant.
- (B) If a second application is withdrawn, the withdrawal shall be with prejudice; the Board will not consider, and the Department of Codes Administration shall not accept for filing, the same or similar application by anyone relating to the same property for six months from the date of the withdrawal.
- (C) In any case where the appellant has failed to appear, the Board shall dismiss the application for lack of prosecution, The appellant will be eligible to re-apply and shall pay a new filing fee and the case will be re-advertised for the next available docket after dismissal.
- (D) All cases shall be advertised for public hearing in accordance with Article XV, Section 17.40 of the Code. In addition, the district council person shall receive notice of all actions on a case within their districts.

5. RES JUDICATA

- (A) The Board shall not consider and the Department of Codes Administration shall not accept for filing, any application for a variance or a special exception permit which requests the same or similar relief as a previous application which involved the same property, regardless of who makes the

application for a period of time of six months unless the Board establishes a different period of time.

- (B) The Board shall not consider, and the Department of Codes Administration shall not accept for filing, any appeal for a declaration of non-conforming status which has been heard on a previous application, regardless of who filed the appeal, within a period of time of six months of a denial.
- (C) Any decision made pursuant to this rule shall be appealable to the Board on a case-to-case basis. The Board can disallow future re-filings of the same request if the Board finds the appellant failed repeatedly to prove their case.

6. CONFLICT OF INTEREST

- (A) Any member of the Board who has a direct or indirect interest in any property which is the subject matter of, or affected by, a decision of the Board shall be disqualified from participating in the discussion, decision, and/or proceedings of the Board in connection therewith as required by the Code in §17.40.230
- (B) Each member of the Board shall conduct themselves in accordance with the Standards of Ethical Conduct as defined in the Metropolitan Code §2.72.010, et seq. Any Board member who may have an interest in the issues in a given case shall publicly state that fact on the record at the commencement of the public hearing so that either party or a member of the Board might object to their further participation in the case.
- (C) Ex Parte Contact: It shall be the policy of this board that no member shall discuss the merits of any pending case with any person having an interest in the case prior to the public hearing. Further any interested party wishing to provide written information to the Board prior to the public hearing (including electronic communications) must place such information in the public record through the staff of the Board prior to providing such information to board members

(D) Submittals: In order to provide information to the Board in a timely manner, any drawings, letters, emails, or other documentation that appellants or opponents want the members of the Board to read prior to the public hearing, must be received by the staff of the Board no later than Noon the Monday prior to the public hearing. Documentation provided within the time listed above will be forwarded by the staff to the members of the Board. Any documentation must conform to the following requirements:

1. Eight copies of each item wishing to be forwarded to the Board.
2. Site plans and elevations conforming to the requirements in Section 3C listed above.

7. PROCEDURE

- (A) All meetings of the Board shall be open to the public pursuant to T.C.A. §8-44-101, et seq.
- (B) Meetings shall be scheduled for 1:00 PM on the first and third Thursdays of each month each calendar year unless otherwise changed by the Board. In cases where meeting dates conflict with holidays or political elections, the Secretary may schedule only one meeting within a twenty-eight (28) day cycle to avoid conflict with these dates. Meetings shall be held in the Sonny West Conference Center in the Howard Office Building located at 700 2nd Avenue South unless an alternate site is needed due to circumstances beyond the control of the Board's Staff.
- (C) The presence of four (4) members of the Board shall constitute a quorum and a quorum must be present to vote on any case.
1. Pursuant to the Metropolitan Charter, §18.10, the Board, acting by and through its Secretary, may, upon the request of a party, compel the attendance of witnesses and the production of books, papers, and records pertinent to a case. Parties must request the

attendance of witnesses at least five (5) days in advance of the public hearing.

2. The witnesses appearing before the Board in public hearing shall not be required to testify under oath, but all witnesses shall be made aware if it is determined that false information has been presented to the Board, the Board has the right to reconsider their decision.

8. HEARING

- (A) Unless otherwise changed by the Board for cause, each case shall be taken in the order listed on the agenda. As a courtesy to the elected officials, the Board may, as a preliminary matter, allow them to make a statement if he or she cannot stay for the public hearing. That testimony shall be considered a part of the record. After a public hearing is closed, no one will be allowed to speak unless the Board re-opens the case. The Board can prompt a discussion with any interested party for purposes of clarification.
- (B) Addendum items shall be heard in the following manner.
 1. Those cases that were deferred by the Board prior to the public hearing, at the request of an appellant shall be heard at the end of the regularly scheduled docket when rescheduled.
 2. The Board, when deferring a case after opening the public hearing, shall indicate in the motion to defer whether the item will be taken up at the front or the rear of the docket on the date it is rescheduled.
 3. All other business, such as cases tied up on votes, requests for rehearing, and other business before the board, shall be taken up at the rear of the docket unless it is determined that the necessity for participation of particular members is required at a specific time during the course of the

public hearing to conduct the business of the board.

- (C) Prior to a public hearing, a board member shall review the case record with a staff member. If the reviewing board member feels that the record indicates the application meets the criteria for which they have applied and testimony from the appellant would not materially alter facts in the case, the reviewing member may, at the public hearing, recommend that the case be moved to the consent agenda. Should there be opposition present, the case shall be removed from the consent agenda and the case will be heard in the order it has been scheduled.
- (D) The Code shall be considered a part of the record in every case coming before the Board. Relevant sections will not be read verbatim into the record unless the parties make a request. The Zoning Code will be made a part of the proceedings before the Board upon any appeal to Courts of Law or Equity as if read verbatim into the record.
- (E) The Board will base its decision only on information presented in public hearing and in the record; however a board member at their option, may visit a site that is the subject of an appeal to gather information. Said visit shall be disclosed in the public hearing and any information learned shall be entered into the record by the board member. In no case shall two or more members visit the site together.
- (F) Each case shall be introduced by the Secretary, or their designee, including:
 - 1. A brief explanation of why the case is before the Board, including relevant code sections;
 - 2. A presentation of maps and photographs, and other exhibits, if necessary.
 - 3. A statement, either orally or in writing, by a representative of the Department of Codes Administration as to the Department's position regarding any case involving a non-conforming use

or interpretation by the zoning administrator; in other matters, the Department may take a position if it so desires;

(G) The appellant shall present their case, including:

1. The appellant's name;
2. A statement of why the appellant believes the relief sought should be granted; and
3. Any witnesses in support of the application.

(H) Opponents shall present their case, including:

1. The opponent's name;
2. A statement of why the opponent believes the relief sought should not be granted, and
3. Any witnesses in opposition to the application.

(I) Time Limits on Testimony

1. If there is no opposition, the appellant shall have 10 minutes to present their case.
2. If there is opposition present, the appellant along with those persons in support shall have 15 minutes in total to present their case. Any rebuttal time the appellant may wish to retain would come from those 15 minutes. Any persons appearing in opposition to the request shall have 15 minutes total to present their case immediately following the close of the appellant's testimony.
3. Either the appellant or opposition may petition the Board for additional time for case presentation. The petitioner must state what extenuating circumstances exist that would prevent the petitioner from completing their case record in the allotted time.
4. Should the Board grant such a request, each side of the case would enjoy equal time. The staff shall present requests after completing

opening remarks for the Board to consider and vote upon.

- (J) Any member of the Board may directly question a witness at any time during their testimony.
- (K) All exhibits presented to the Board for consideration must be submitted as evidence and made a part of the record unless the Board otherwise deems it unnecessary. All bulky exhibits presented to the Board must be accompanied by a copy of the exhibit and submitted on a suitable size for record by the person presenting the exhibit.
- (L) Upon the conclusion of all of the testimony and evidence, the public hearing will be closed and no further evidence may be admitted except as the Board may permit on motion.

9. CASE DECISIONS

- (A) Upon the conclusion of the public hearing of each case, the Board shall discuss and vote on that case.
- (B) After discussion by the members and upon motion, an application shall be granted or denied if it receives four (4) concurring votes.
- (C) In the event that five or more members are present, failure to receive four affirmative votes within thirty (30) days of the public hearing, the case shall be deemed denied by operation of law.
- (D) In any decision made by the Board on an application:
 - 1. For a variance:
 - a. The Board shall indicate the specific section of the Code under which the variance is being considered, and shall state its findings beyond such generalities as "in the interest of public health, safety and general welfare."

- b. In cases pertaining to hardship, the Board shall specifically identify the hardship warranting such action.
2. For a special exception permit:
- a. The record shall indicate the specific section of the Code under which the permit is being considered, shall state its findings beyond such generalities as "in the interest of public health, safety and general welfare," and that the application meets all conditions and shall state clearly any other specific conditions imposed in granting such permit.
 - b. On all day care homes the following conditions will be automatically placed on all day care homes:
 - 1. Fenced Play area required and must be connected to the building;
 - 2. No signs pertaining to the day care on the premises;
 - 3. Appellant must reside on the premises;
 - 4. Hours of operation are limited to 6 a.m. to 6p.m., Monday - Friday only;
 - 5. No dogs are to be kept on the premises;
 - 6. No swimming pools or spas on the property and ;
 - 7. For appellant only.
 - c. All special exception uses approved by the Board are site plan certain. Any major deviation would require Board action.
 - d. In the interest of having informed stake holders in special exception cases, it is required that the appellant makes contact with the district councilperson and neighbors within 300 feet of the subject property (from a mailing list provided by the Board's staff). Information to be furnished by the appellant shall include a contact person and include a reasonable representation of their proposal and hold a meeting at a geographically convenient place, date and time. Applicants shall document to the Board that this requirement has

been met. Failure to comply shall result in deferral of their case.

10. POST HEARING REQUESTS

(A) Request for rehearing:

1. Any aggrieved party may, within sixty (60) days of the public hearing, request a rehearing in a case they participated in.
2. No such request to grant a rehearing shall be considered, unless new evidence is submitted which could not have reasonably been presented at the previous hearing.
3. The request must be in writing and it must recite with specificity the new evidence and the reasons for the request. The request may be accompanied by plans or diagrams, if necessary.
4. A request for a rehearing shall be acted upon by motion of a member of the Board who voted in the majority as to the disposition of the case.
5. The affirmative vote of four (4) members for the motion is necessary to grant a rehearing. Failure to obtain four (4) votes shall be deemed a denial.
6. If the request is denied, an appropriate order shall be prepared by the Secretary and sent to the parties making the request.
7. If the request is granted, an appropriate order shall be prepared by the Secretary, a copy shall be sent to the all the parties and the case will be set for another public hearing - upon receipt of a new filing fee by the moving party.

(B) Appeal of Board's Decisions

1. Any aggrieved party may within 60 (sixty) days of the entry of an order appeal a finding of the Board under common law writ of certiori in accordance with TCA 27-9-101 et seq.

11. ENTRY OF ORDERS

- (A) As soon as possible after the decision of the Board in a particular case, the Secretary shall enter an order describing the action taken, the reasons, therefore, and vote.
- (B) The order shall be dated and signed by both the Chair or Vice-Chair and the Secretary. The Secretary is hereby authorized to affix the Chair or Vice-Chair's signature to the order by use of a stamp bearing a facsimile thereof.
- (C) After the Order has been duly executed, a copy shall be placed in the Order Book, the Board's file, and the Map and Parcel records of the Department of Codes Administration.
- (D) A copy of the Order shall be sent to the appellant informing them of the decision of the Board.

12. MINUTES AND RECORDS

- (A) Each action of the Board shall be recorded with an order and supporting documentation retained in the appeal file. The entire proceedings shall be recorded and that record shall be retained a minimum of six (6) months following a final decision by the Board. All such records shall be available to the public in the Secretary's offices.

13. ABSENCE OF A RULE

- (A) When an issue arises which is not specifically covered by these rules, the Board will be governed by Robert's Revised Rules of Order.

14. SPECIAL MEETINGS

- (A) A special meeting may be called by the chairperson or upon the written request of three (3) or more members of the Board. Written notification of the time, place and purpose of the meeting shall be delivered to each member of the Board at least five (5) days prior to the meeting. At a special meeting, only the

business designated as the purpose of the meeting may be transacted.

15. ELECTION OF OFFICERS

- (A) The Board shall elect from its members a Chair and a Vice-Chair, who shall serve for one (1) year. Elections shall be held in May.
- (B) A majority of the voting member present shall be required to elect a member to the position.

16. AMENDMENTS

- * (A) These rules may be amended at any regular or special meeting of the Board by a positive vote of four (4) members provided all members have been notified of the amendment at least ten (10) days prior to the meeting.

17. INTERPRETATION OF THE BOARD'S RULES

- (A) The Board is the final authority as to the meaning of these rules.
- (B) The Board may, from time to time, make an exception in these rules for extraordinary cases, setting out the reasons therefore.

18. FILING AND EFFECTIVE DATE

- (A) These rules shall become effective, after adoption, upon the filing of these rules with the Metropolitan Clerk.

19. REPEAL OF PREVIOUS RULES OF PROCEDURE

- (A) Any other Rules of Procedure previously adopted by this Board are hereby repealed.

APPROVED AND ADOPTED ON THIS

1st DAY OF November

2012.

Chris Whitson
CHAIR

Paul K. Hargis
SECRETARY